IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 29.10.2007

Avjinder Singh Sibia

Petitioner

versus

S.Parkash Singh Badal and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice Rajive Bhalla.

Present: Mr.M.S.Khaira, Senior Advocate, with
Mr.B.S.Sewak & Mr.Dharminder Singh, Advocates,
for the petitioner.
Mr.H.S.Mattewal, AG, Punjab, with
Mr.N.D.S.Mann, Addl.AG, Punjab.

UMA NATH SINGH, J.

The petitioner was nominated during the term of the previous government as a member of Market Committee Raikot (Ludhiana) on 16.2.2005 in exercise of powers under Section 12 of the Punjab Agricultural Produce Markets Act, 1961 (for short `the Act') and other powers vested in the Governor of Punjab. He also became the Chairman of the said Committee, however, he has ceased to continue in office with issuance of the Punjab Ordinance No.2 of 2007 by the present Government, which was later translated in to an enactment, being the Punjab Act No.5 of 2007 substituting Section 12-A of the Act, whereby all the market committees in the state of Punjab have been superseded. The petitioner has, hence, sought to challenge the provisions of the Punjab Act No.5 of 2007, on the ground that the procedures laid down under Section 35 of the Act have not been

followed. Section 12-A of the Act after amendment by Act No.5 of 2007 reads as follows:

"12-A. Supersession of nominated Committees

On and from the commencement of the Punjab Agricultural Produce Markets (Amendment) Ordinance, 2007.

(a) all the Committees, constituted by way of nomination, under section 12 as it existed immediately before such commencement, shall stand superseded;

(b) all the members including the Chairman and the Vice-Chairman of every Committee, shall cease to hold office;

(c) during the period of supersession of the Committees, all powers and duties conferred and imposed upon the Committee, its Chairman and other members by or under this Act, shall be exercised and performed by such officer, as the Government may appoint in that behalf; and

(d) all property vested in each Committee shall, until these are re-constituted, vest in the Government:

Provided that the Committees shall be re-constituted in accordance with the provisions of section 12 within a period of six months from the date of supersession."

Thus, by amendment in the proviso to Punjab Act No.5 of 2005 by the Act No.5 of 2007, the period of *three years has been substituted by a period of six months* from the date of supersession. The other Section which also provides for supersession of Committees is Section 35 of the Act. The provisions of Section 35 of the Act read as under :

"35 Supersession of committees

(1) If, in the opinion of the State Government, a Committee

is incompetent to perform or persistently makes default in performing the duties imposed on it by or under this Act, or abuses its powers, the State Government my, by notification, supersede the committee:

Provided that before issuing a notification under this sub-section, the State Government shall give a reasonable opportunity to the committee for showing cause against the proposed supersession and shall consider the explanations and objections, if any, of the committee.

(2) Upon the publications of a notification under sub-section (1) superseding a committee, the following consequences shall ensue:-

a) all the members including the Chairman and Vice-chairman of the committee shall, as from the date of such publication, be deemed to have ceased to be members of the committee;

b) all assets of the committee shall vest in the Board and the Board shall be liable for all the legal liabilities of the committee subsisting at the date of its supersession upto the limit of the said assets;

c) The State Government may, in its discretion, by order constitute either a new committee as provided under section 12 or such other authority for the carrying out of the functions of the committee [and of its Chairman and other members] as the State Government may deem fit.

(3)(a) When the State Government has made an order under

clause (c) of sub-section (2), the assets and liabilities defined in clause (b) of sub-section (2) vesting in the Board at the date of such order shall be deemed to have been transferred on the date of such order to the new committee or authority constituted as aforesaid.

(b) (i) Where the State Government by order under clause (c) of sub-section (2) has appointed an authority other than a new committee for the carrying out of the functions of the superseded committee, the State Government may, by notification, determine the period not exceeding one year for which such authority, shall act:

Provided that the term of office of such authority may be terminated earlier, if the State Government for any reason consider it necessary.

(ii) At the expiry of the term of office of such authority a new committee shall be constituted;

(iii) Upon such an order being made the assets and liabilities vesting in the authority thereby superseded, shall be deemed to have been transferred by such order to the new committee.

(4) Whenever the assets of a committee vest in the Board and no new committee or authority is appointed in its place the Board shall employ the balance of the assets remaining after the discharge of the subsisting legal liabilities of the committee or any object of public utility in the area specified in the notification issued under section 6."

As per the averments made in the writ petition, after formation

of the present Government in February, 2007, it was decided to remove all the Chairman, Vice-Chairman and Members of the market committees nominated by the previous Government in the State. Thus, in exercise of powers under clause 1 of Articles 213 of the Constitution of India, an ordinance to that effect was issued to be followed by the Amendment Act No.5 of 2007. Section 12-A of the Act and the consequent notification issued thereunder have been impugned herein mainly on the ground that the Amendment Act gives sweeping powers to the respondents to act arbitrarily with discrimination which is violative of Article 14 of the Constitution of India.

Heard learned counsel for the parties and perused the records.

The principal submission of learned senior counsel for the petitioner is that in case of nomination under a statute, the statute would contain such provisions that the continuance of tenure of office of a nominated member would be subject to pleasure of the Governor. He has cited a constitution bench judgment of Hon'ble the Apex Court reported in AIR 1965 SC 1518 (Ram Dial and others versus State of Punjab). In that case before the Hon'ble Supreme Court in appeal, provisions of Section 14 (e) of the Punjab Municipalities Act (3 of 1911) were challenged on the ground of being discriminatory, and, thus, violative of Article 14 of the Constitution of India. The appellants therein had been elected to the Municipal Committee, Batala, in the elections held on 22.1.1961. Result of the elections was notified on 27.2.1961, and the elected members took oath on 16.3.1961 and started functioning with effect from that date itself. On 4.8.1961, certain notifications were issued, wherein it was mentioned that the Governor of Punjab in exercise of his powers was pleased to direct that

the seats of all the appellants shall stand vacated from the date of publication of the notifications in the State Gazette in public interest.It was also directed that under sub-section 3 of Section 16 of the Act, the appellants shall stand disqualified for election for a period of one year w.e.f. the date so specified. In the appellants' writ petitions before this High court, it had been contended that the impugned action was taken without issuing them a notice to show cause as to why their seats be not vacated, and thus, they were denied the right of hearing. The appellants came to know after issuance of notifications that the said notifications had been issued on the basis of a resolution passed by the out-going members of the Municipal Committee on 13.3.1961 to the effect that the appellants had taken part in a demonstration on 10.3.1961 and had also broken some glass panes of the municipal building. It had also been contended in that writ petition that the out-going Municipal Committee was dominated by the members of the out-going political party, who were defeated by the appellants in the fresh elections held on 22.1.1961. Accordingly, that resolution was passed with a malafide intention to harm the appellants. In their writ petitions filed in this High Court, the appellants had taken various grounds while assailing the order of the Governor. However, the main point, which needed a decision and which could not be taken in the writ petitions was as to whether the provision of Section 14(e) of the Act was discriminatory and as such, hit by Article 14 of the Constitution of India. The appellants suffered an adverse order in the writ petitions. Being aggrieved, they filed Civil Appeals in the Supreme Court , and also a writ petition under Article 32 to urge the point of discrimination under Section 14(e) vis-a-vis Section 16 (1) of the Act which could not be urged in the writ petitions. Hon'ble the

Apex Court while deciding the civil appeals and the writ petition has discussed the relevant provisions of the Act and given reasons for allowing the Appeals and the writ petition in paras 3 to 7 of the judgment as under:

> "(3) We are of the opinion that the appeals must succeed on this point. It is necessary in this connection to refer to Ss. 14 (e), 16 and S.24(3) of the Act. The relevant part of S.14(e) with which we are concerned provides that notwithstanding anything in the foregoing sections of Chapter III, which deals with constitution of committees, appointment and election of members, term of office of members of municipal committees, the State Government may, at any time, for any reason which it may deem to affect the public interest, by notification, direct that the seat, of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in the Act or in the rules made thereunder. Further sub-s.(3) of S.16 provides that "a person whose seat has been vacated under the provisions of Section 14(e) may be disqualified for election for a period not exceeding five years". There is no provision for giving notice to a member against whom action is taken under S.14(e) and he is not entitled to any hearing before action is taken against him. Further action can be taken against a member for any reason which the State Government may deem to affect the public interest.
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> 4. Section 16 is another provision which gives power to the State Government to remove any member of a municipal

committee. This power is exercised for reasons given in cl.(a) to cl.(g) of S.16(1). The proviso to S.16(1) lays down that

"before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing."

The proviso, therefore, requires a hearing before the State Government takes action under Section 16(1). Sub-s.(2) of S.16 provides for disqualification and says inter alia that any person removed under S.1(1) shall be disqualified for election for a period not exceeding five years. There is a slight difference here inasmuch as under this provision there must be disqualification for some period not exceeding five years, though if a member's seat is vacated under S.14(e) the disqualification is entirely in the discretion of the State Government and is not imperative. That, however, has no effect on the question whether the relevant part of Section 14 (e) is unconstitutional as it is hit by Art.14.

(5) Reference may now be made to S.24 on which reliance has been placed on behalf of the State. Section 24(1) inter alia prescribes the oath before a member can begin to function. Section 24(2) lays down inter alia that if a person omits or refuses to take the oath as provided in sub-s.(1) within three months of the date of notification of his election or within such further period as the State Government may consider

reasonable, his election, becomes invalid. Sub-section (3) of S.24 provides inter alia that where the election becomes invalid under sub-s.(2), a fresh election shall be held. The proviso to sub-s.(3) on which stress has been laid on behalf of the State lays down inter alia that the State Government may refuse to notify the election as member of any person who could be removed from office by the State government under any of the provisions of S.16 or of any person whom the State Government for any reason which it may deem to affect the public interests may consider to be unfitted to be a member of the committee, and upon such refusal the election of such person shall be void.

(6) The arguments on behalf of the appellants is that S.16 which gives power to the State Government to remove a member provides that before that power can be exercised, reasons for the removal have to be communicated to the member concerned and he is to be given an opportunity of tendering his explanation in writing. So it is urged that before action can be taken to remove a member under S.16 , the proviso thereof requires that the member concerned is to be given a hearing as provided therein. The argument proceeds that the relevant part of s.14(e) also provides in effect for the removal of a member though it actually says that the seat shall be vacated and that this removal has to be for any reason which in the opinion of the State Government affects the public interest. It is urged that when S.16(1) provides for removal for

reasons given in cls.(a) to (g), that removal also is in the public interest. Therefore, there are two provisions in the Act one contained in S.14(e) and the other in S.16. Where the State Government takes action under S.16(1), it has to give a hearing in terms of the proviso thereof to the member concerned, but if for exactly the same reason the State Government chooses to take action under Section 14(e) it need not give any opportunity to the member to show cause why he should not be removed. Further it is submitted that though S.14(e) may be said to be wider inasmuch as cls. (a) to (g) may in a conceivable case not completely cover all that may be included in the term "public interests", the removal for reasons given in cls. (a) to (g) in S.16(1) is in public interest and, therefore, what is contained in S.16(1) is certainly all covered by S.14(e). In consequence there are two provisions in the Act for removing a member, one contained in S.16 where the State Government cannot remove the member without giving him a hearing in the manner provided in the proviso, and the other in S.14(e) where no hearing is to be given and the member is not even called upon to show cause. Finally it is urged that it depends entirely on the State Government to use its powers either under S.14(e) or under S.16(1), where the two overlap and, therefore, there is clear discrimination, as the provision in S.14(e) is more drastic and does not even provide for hearing the member concerned.

7. We are of the opinion that these contentions on behalf

of the appellants are correct. There is no doubt that the removal contemplated in S.16(1) for reasons in cls. (a) to (g) thereof, as their content shows, is in the public interest and the proviso to S.16(1) provides for a hearing in the manner indicated therein. On the other hand S.14(e) which also provides for removal in the public interest makes no provision for hearing the member to be removed. Even if S.14(e) is wider than S.16(1), there is no doubt that all the reasons given in cls. (a) to (g) are in the public interest and, therefore, even if the State Government intends to remove a person for any reasons given in cls. (a) to (g) it can take action under S.14(e) and thus circumvent the provisions contained in the proviso to S.16(1) for hearing. Thus there is no doubt that S.14(e) which entirely covers S.16(1) is more drastic than S.16(1) and unlike S.16(1) makes no provision for even calling upon the member concerned to explain. In this view of the matter it is clear that for the same reasons the State Government may take action under S.16(1) in which case it will have to give notice to the member concerned and take his explanation as provided in the proviso to Section 16(1), on the other hand it may choose to take action under S.14(e) in which case it need not give any notice to the member and ask for an explanation from him. This is obviously discriminatory and, therefore, this part of S.14(e) must be struck down as it is hit by Art.14 of the Constitution."

Thus, as per the ratio of the judgment, section 14(e) was held to

be discriminatory and being hit by Article 14 of the Constitution for it did not envisage a provision for giving a show cause notice to members to explain before proceeding against them although the subject matter of this Section was similar to the one as contained in Section 16(1), which contrarily provided for a show cause notice and hearing. Thus, the provisions of Section 14(e) of the Act were held to be more drastic and to that extent the Section was struck down by the Hon,ble court. Learned senior counsel has also placed reliance on the judgment of Hon'ble the Apex Court reported in AIR 1974 SC 555 para 85 (E.P.Royappa versus State of Tamil Nadu and another), to argue that where an Act is arbitrary, implicitly, it is unequal both according to political logic and constitutional law, and therefore, if it affected any matter relating to public employment, it would be violative of Article 14 of the Constitution. Para 85 being relevant part of the judgment is reproduced here under:

> "The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground it is really in substance and effect merely an aspect of the second ground based on violation of Arts. 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged

in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Art 14 is the genus while Art. 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle ? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14 and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all

> similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reasons for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

While citing the judgment of Hon'ble the Apex Court reported in AIR 1974 SC 543 (The State of Punjab and another versus Khan Chand), learned senior counsel has tried to build up a case on the basis of principle of law enunciated in that judgment that the Constitution has assigned to the Courts the function of determining as to whether the laws made by the Legislature are in conformity with the provisions of the Constitution. Para 12 of the judgment relied upon by the learned senior counsel reads as:

> "It would be wrong to assume that there is an element of judicial arrogance in the act of the courts in striking down an enactment. The Constitution has assigned to the courts the function of determining as to whether the laws made by the legislature are in conformity with the provisions of the Constitution. In adjudicating the constitutional validity of statutes, the courts discharge an obligation which has been imposed upon them by the Constitution. The courts would be

shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional, even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 226 are an integral part of the Constitution and provide remedies for enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the courts to declare the provisions of an enactment to be unconstitutional, even though they are found to infringe the Constitution because of any notion of judicial humility would in a large number of cases have the effect of taking away or in any case eroding the remedy provided to the aggrieved parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where power is conferred to protect the interest of others against measures which are violative of the Constitution is fraught with serious consequences. It is as much the duty of the courts to declare a provision of an enactment to be unconstitutional if it contravenes any Article of the Constitution as it is theirs to uphold its validity in case it is found to suffer from no such infirmity."

By referring to another judgment of Hon'ble the Apex Court reported in AIR 1993 SC 1440 (Om Narain Aggarwal and others versus Nagar Palika, Shahjahanour and others), learned senior counsel contended that in the second proviso to the provision of the Act impugned therein, it was mentioned that the appellants were to hold office at the pleasure of the

Governor/Government and the doctrine of pleasure discussed in the judgment supports his contention. In yet another judgment of the Hon'ble Court cited by learned senior counsel, which is reported in AIR 2001 SC 695 (Krishna Bulaji Borate versus State of Maharashtra and others), the contentions urged therein have been answered as under :

> "7. In the present case, the appellant was appointed under sub-section (2) of Section 4 read with Clause (e) of sub-section (1) of Section 4 and was removed by order dated 9-2-2000 under Section 6 of the Act. Having considered the submissions for the parties and after perusing the language of the sections, we have no hesitation to hold, that the field of Section 6 and Section 10 are separate. The removal spoken under Section 6 is removal without any stigma while the removal under Section 10 is removal with penal consequences attaching stigma. If submission for the appellant is accepted, viz. Section 6 empowers and Section 10 lays down condition and procedure to remove then removal of trustee could only be for penal consequences and not otherwise. If that be so, there could be no reason to enact Section 6 as Section 10 covers such cases. It is significant, the removal under Section 6 is confined only to such Trustees who are covered under Clause (e) of sub-section (1) of Section 4 and who are also nominated by the State Government. Rights of Trustees falling under the aforesaid Clause (e) are rights created under a statute and hence that very creator can always limit or curtail such right. In such cases, if a Trustee is removed, he cannot project any grievance that no

opportunity was given to him. If any right which is creature of statute, is limited or curtailed by that very statute, in the absence of any other right under that very statute or of the Constitution of India, such Trustee cannot claim any right based on the principle of Natural Justice.

8. The removal spoken here neither casts any stigma nor leads to any penal consequences. This clearly reveals doctrine of pleasure which is implicit in this section. In any statute expression of the will of the legislature may be explicit or it may be implicit. It is open for the Courts, while interpreting any provision to spell or read with other provisions of the statute if so intended to read implicitly, in the absence of any explicit words that subserve the intent of the legislature."

The provisions of Section 6 of the Act under challenge, contain a mention about the removal of the appellants at any time which rather appear to counter the point of law raised by learned senior counsel in the case on hand.

In the judgment reported in AIR 2003 SC 2236 (Bakhtawar Trust and others versus M.D.Narayan and others), at page 2245 para 31, which learned senior counsel has cited in support of his contentions, Hon,ble Supreme Court has held as :

"1. It was then urged on behalf of the respondents that a perusal of the Statement of Objects and Reasons for the Validation Act shows that the intention of the legislature was rather to render the decision of the High Court infructuous than to correct any infirmity in the legal position. For this, reliance was sought to be placed on the Statement of Objects and Reasons of the

impugned enactment. It is well settled by the decisions of this Court that when a validity of a particular statute is brought into question, a limited reference, but not reliance, may be made to the Statement of Objects and Reasons. The Statement of Objects and Reasons may, therefore, be employed for the purposes of comprehending the factual background, the prior state of legal affairs, the surrounding circumstances in respect of the statute and the evil which the statute has sought to remedy. It is manifest that the Statement of Objects and Reasons cannot, therefore, be the exclusive footing upon which a statute is made a nullity through the decision of a Court of law."

Learned senior counsel has also cited another latest judgment of Hon'ble the Apex court to draw support from the discussions about the nature of discretionary powers of the Governor of Mizoram in nominating four members of District Councils and Regional Councils as also the inclusion of doctrine of pleasure in the provisions of the Sixth Schedule to the Constitution. The decision is reported in AIR 2005 SC 1537 (Pu Myllai Hlychho and others versus State of Mizoram and others), and its relevant portions which have been placed reliance read as:

"8. The relevant provisions of the Sixth Schedule to the Constitution regarding the administration of tribal areas in the State of Assam, Meghalaya, Tripura and Mizoram are as follows:

"1. Autonomous district and autonomous regions...

2. Constitution of District Councils and Regional Councils - (1)

There shall be a District Council for each autonomous district consisting of not more than thirty members of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult suffrage.

(2).....

(3) Each District Council and each Regional Council shall be a body corporate by the name, respectively, of 'the District Council of (name of district)' and 'the Regional council of (name of region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(4) .....

(5) .....

(6) .....

(6A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor (emphasis supplied).....

(7) .....

(8).....

(9).....

10. The above provisions show that under sub-rule (1) of Paragraph 2, the Governor of Mizoram is competent to nominate four members of MADC.

11. Sub-paragraph 6A of Paragraph 2 further shows that the

members thus nominated shall hold office at the pleasure of the Governor. The Governor is given powers to terminate the membership of the Council under sub-paragraph 6A of Paragraph 2. The Governor is not given any discretion under Paragraph 20BB, in respect of powers to be exercised under sub-paragraph (6A) of Paragraph 2. Under the discretionary powers of the Governor in discharge of his functions, the power to be exercised under sub-paragraph (6A) of Paragraph 2 is not included, whereas it is specifically mentioned that the power of the Governor to be exercised under sub-paragraph (1) of Paragraph 2 could be exercised in his discretion in the mode prescribed under paragraph 20-BB of the Sixth Schedule. Thus, these provisions would show that as regards the nomination of four members of the MADC, the Governor can exercise the discretionary powers whereas the power of termination of the members under sub-paragraph (6A) of Paragraph 2 is not left to the discretion of the Governor,....."

Learned senior counsel has also relied upon a judgment of Hon'ble the Apex Court which is reported in 2005(7) SCC 764 (Ajit Kumar Nag versus General Manager (Pj) Indian Oil Corporation Limited, Haldia and others), to argue that this is a well settled principle of law that a provision which is otherwise legal, valid, and intravires can not be declared unconstitutional or ultravires merely on the ground that there is a possibility of abuse or misuse of such powers. If the provision is legal and valid,it will remain in the statute book. Conversely,if the provision is arbitrary,ultra vires or unconstitutional, it has to be declared as such notwithstanding the

laudable object underlying it. While arguing on the basis of the judgment of the Hon'ble Court reported in AIR 2006 SC 1489 (Bombay Dyeing & Mfg. Co. Ltd. Versus Bombay Environmental Action Group & Ors.) page 1530 (para 204), learned senior counsel submitted that an arbitrariness on the part of the Legislature in enacting a legislation in violation of article 14 of the constitution should ordinarily be manifest arbitrariness. What would be arbitrary exercise of legislative power would depend upon the provisions of the statute vis-a-vis the purpose and object thereof.

On the other hand, learned Advocate General for the State of Punjab while referring to reply of the respondent State contended that the petitioner was nominated under Section 12 of the Act by the Government and he is not an elected representative. He also submitted that the act of supersession of market committees in the state is not by way of exercise of an executive power but is the result of operation of law enacted by the state Legislature within its legislative competence. And to exercise powers and for performance of duties of the committee,under section 12A(c) of the Act, an Administrator has been appointed for each such committee after taking into account the factors like providing a better service in public interest and to bring about economy in expenditure. As the present Government has been voted to power by the people, it is duty bound to carry out the responsibility of implementing its policies as canvassed to the electorate before formation of the Government. Thus, the impugned legislation can not be termed as unconstitutional in malafide and arbitrary exercise of legislative powers. Moreover, the powers of supersession under Section 35 of the Act are to be exercised only on given grounds, whereas in the instant case, no such ground is necessary, nor been taken, in order to

avoid stigma of incompetency attributable to all the nominated members of superseded committees, and rather by passing the impugned Amendment Act, all the market Committees in the state have been statutorily superseded. Learned Advocate General also took us to the relevant paras of written reply during course of his arguments and urged that the allegations made against the respondent State be put to strict proof as the Act impugned herein is a creature of a bonafide exercise of Legislative function of the State. Such an exercise of powers should not be attributed a motive of arbitrariness or malafide. Moreover, powers under Section 35 of the Act are administrative powers to be exercised in individual cases, where a committee is found to be incompetent or is persistently making default in carrying out its functions. Hence, the provisions of Section 35 of the Act are not attracted in the present case. The State Legislature is empowered under Entry Nos.5, 18 and 28 of the State list to supersede the committees in question by passing suitable amendments in the Act. The Impugned Punjab Act No.5 of 2007 has been passed by substituting existing Section 12A within legislative domain and competence of the State Legislature. It is not open to challenge the validity of the Amended Act, except on the ground of violation of provisions of Articles 14 and 254 of the Constitution of India and the petitioner has not made out any such ground either. In the light of the changed political scenario in the State after February, 2007, the existing market committees in the State no longer remained the representative bodies to serve the best interests of the people of the State of Punjab and the State Government apprehended gross-mismanagement and disturbance on account of party factionalism. Hence, the ordinance dated 18.5.2007, which was replaced by the Amendment Act, was issued to implement the

commitments of the Government. It is also urged that the petitioner has no cause of action to invoke extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and no such relief as prayed for could be granted thereunder. This is also a submission of learned Advocate General that the petitioner has no fundamental right to continue on the post of Chairman of the Committee, as he was only a creature of a statute.

We have carefully considered the rival submissions and perused the records of the case.

It appears that the petitioner was only a nominated member of the Market Committee Raikot (Ludhiana), whereas in the constitution bench judgment of Hon'ble the Apex Court in the case of Ram Dial and others (supra), the appellants, who had been removed by a notification, were elected members of the municipality, and they had been removed on the ground of a resolution passed by out-going members of the committee belonging to a different political party, who had lost their seats to the appellants in elections. Moreover, the provisions of Section 14(e) of the Punjab Municipalities Act No.3 of 1911 had given unfettered discretion to the Government to remove elected representatives/members of municipal committees without any notice to them, and/or without a right of hearing which, on the contrary, was envisaged under Section 16, a parallel provision of the same Act which also provided for removal of a member of municipal committee in public interest. As regards the Amendment Act No.5 of 2007 impugned herein which has superseded all the market committees with nominated members in the State, it does not seem to carry an element of malafide, inasmuch as, it has been passed to supersede all such committees in the State and not any individual market committee. Further, provisions of Section 35 of the Act, which have been heavily relied upon by

learned senior counsel for the petitioner, are to apply in individual cases, on the ground of incompetency. An order passed in exercise of powers under Section 35 would essentially be stigmatic in nature and, therefore, before passing any such order, it may require granting an opportunity of hearing to the aggrieved person. The Act in question has been passed by the legislature by exercising powers within its legislative competence ,and in no manner, it casts any stigma like the one in built in the grounds under Section 35 of the Act. Moreover, we are also not inclined to accept the submission of learned senior counsel that the doctrine of pleasure would not apply if the statute provides for specific term of the office. This submission was also urged before Hon'ble the Apex Court which could not find favour vide the judgment reported in 1993(2) SCC 242 (Om Narain Aggarwal and others versus Nagar Palika, Shahjahanour and others). The arguments raised on behalf of the appellants are contained in para 9 of the judgment as under:

> "9. Learned counsel for the private respondents submitted that once the power of nominating the women members is exercised by the State Government, such nominated members cannot be removed prior to the completion of the term of the Board unless they are removed on the grounds contained under Section 40 of the Act. It was also contended that the State Government cannot be allowed to remove a nominated member at its pleasure without assigning any reason and without affording any opportunity to show cause. Once a woman member is nominated she gets a vested right to hold the office of a member of the Board and the State Government

> cannot be given an uncanalised, uncontrolled and arbitrary power to remove such member. It is contended that such arbitrary and naked power without any guidelines would be contrary to the well established principle of democracy and public policy. It would hamper the local bodies to act independently without any hindrance from the side of the Government."

The Hon'ble Court in para 13 of the judgment held that the nominated members of the Board fall in a different class and cannot claim equality with the elected members. The Hon'ble Court has also held that even the highest functionaries in the Government, like the Governors, the Ministers, the Attorney General and the Advocate General, discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to become demoralised or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remained in the office. This observation of the Hon'ble Court was given in answer to an additional argument raised in the case that in such cases, there would be a constant fear of removal at will of the State Government and is bound to demoralise the nominated members in discharge of their duties as members of the Board. The Hon'ble Court has also held that the right to seek an election or to be elected or nominated to a statutory body depends and arises under the statute. If such appointments have been made initially by nomination on political consideration, there can be no violation of any provision of the Constitution, in case the Legislature authorises the State Government to terminate such appointments at its

pleasure and to nominate new members in their place. The nominated members do not have the will or authority of the persons to be affected by the act of such body. It also appears from the ratio of the judgment that as the provision challenged therein did not put any stigma on the performance or character of the nominated members, their removal without affording an opportunity did not offend any provision of the Constitution. Though in an earlier judgment reported in AIR 1954 SC 245, while dealing with the doctrine of pleasure, the Hon'ble Court has held that to the extent of deviation from the doctrine of pleasure, a civil suit would be maintainable but in the judgment of 1993 (supra), no such liberty appears to have been granted. Moreover, looking to the nature of appointment as being nominated, it would not be open to assail the amendment on the ground of livelihood and even if a party takes the plea of doctrine of livelihood, this being a question of private interest would have to yield to public interest. In the instant case, the Legislature in its wisdom has passed the impugned amendment superseding all the market committees with nominated members and has not left it to the administrative exercise of discretion of the Government under Section 35 of the Act, and rightly so, because in that case, it would cast stigma on the members of the committee and under such circumstances, even though they are nominated, they would be entitled to a personal hearing. Though there is no specific mention about the doctrine of pleasure in the Act to be applicable in this case, but in the facts and circumstances of the case, as the petitioner was nominated to the Board and it was not a selection or election, the doctrine of pleasure may be read into the Act and would certainly apply, thus, principle of natural justice as regards giving of hearing before removal from office in the absence of any

stigma would not be attracted. Irrespective of doctrine of pleasure, as argued by learned senior counsel, the impugned Act No.5 of 2007 whereby all the nominated market committees in the State have been superseded is also justified on the ground that nomination to an office which if made under a Statute can be taken away by suitable amendments in that statute as a nomination does not create a fundamental right or a common law right in favour of a nominated member to continue in the office.

From the written statement submitted on behalf of the State detailing the reasons for introducing the amendment in the Act, it appears that there are valid reasons for the State Government, as discussed hereinabove to bring the amendment. Besides, if the exercise of the legislative powers is bonafide, there is no reason for this Court to interfere with the impugned enactment. As said hereinabove, nomination to a committee is always made out of political expediency, therefore, its further continuance may depend upon the statute whereunder the member is nominated and by introducing suitable amendments in the statute the same can be discontinued. As regards the settled principles of law as enunciated by Hon'ble the Apex Court in the judgments cited hereinabove, we are not oblivious of the fact that the mandate of these judgments have to be applied in similar set of facts and circumstances of a case and if a statute cannot stand on the anvil of such established principles of law applicable for testing the constitutional validity of its provisions, it need not be said that such a statute would not endure. However, if an Act passed by a State legislature does not suffer from any incompetence and/or arbitrariness, and the actions taken thereunder do not cast any stigma on the affected person, this Court would be loath in exercising its powers under the writ

jurisdiction.

In the premises discussed hereinabove, we do not find any ground to hold the provisions of the Punjab Act No.5 of 2007 as unconstitutional, offending and ultra vires and thus it is held to be intra vires. Resultantly, the Civil Writ Petition No.10900 of 2007 being devoid of merits, is, hereby, dismissed.

(UMA NATH SINGH)
JUDGE

29.10.2007 (RAJIVE BHALLA)
Pk JUDGE

Whether to be referred to Reporter? Yes/No